

Craig S. Summers (SBN 108,688)
craig.summers@kmob.com
Paul A. Stewart (SBN 153,467)
paul.stewart@kmob.com
Bridget A. Smith (SBN 253,548)
bridget.smith@kmob.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
Telephone: (949) 760-0404
Facsimile: (949) 760-9502

Attorneys for Plaintiff/Counterdefendant
DATCARD SYSTEMS, INC.

Marc E. Hankin (SBN 170,505)
Marc@HankinPatentLaw.com
Kevin Schraven (SBN 259,446)
Kevin@HankinPatentLaw.com
HANKIN PATENT LAW APC
12400 Wilshire Boulevard, Suite 1265
Los Angeles, CA 90025
Telephone: (310) 979-3600
Facsimile: (310) 979-3603

Attorneys for Defendant/Counterclaimant
DATA DISTRIBUTING, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DATCARD SYSTEMS, INC., a
California corporation,

Plaintiff,

v.

DATA DISTRIBUTING, LLC, a
California Limited Liability
Corporation,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. SACV 11-1434-DOC (VBKx)

**STIPULATED PROTECTIVE
ORDER**

STIPULATED PROTECTIVE ORDER

WHEREAS, the parties consider certain information likely to be disclosed during discovery to be confidential within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure;

WHEREAS, the parties mutually desire that a protective order limiting use, access to, and disclosure of such confidential information be entered;

It is hereby AGREED and STIPULATED among the parties and ORDERED pursuant to Rule 26(c) of the Federal Rules of Civil Procedure as follows:

1. Any document, deposition testimony, or other information disclosed in this case, or any portion thereof, may be designated as “Confidential” or “Confidential – Outside Counsel Only” by any party, including without limitation, any third party not a party to the case or witness if such party or witness reasonably believes in good faith that such material is properly entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure.

2. Information, documents, or other things subject to protection under this Order (“Protected Material”) shall be identified as “Confidential” or “Confidential -- Outside Counsel Only.” The words “Confidential” or “Confidential -- Outside Counsel Only” shall be placed clearly on each page or portion of the Protected Material at the time the Protected Material is produced. If a party through inadvertence produces or provides discovery of any Protected Material without first labeling, marking or designating it as “Confidential” or “Confidential -- Outside Counsel Only,” then the producing party may, within ten (10) days after the discovery of the inadvertent production, give written notice to the receiving party or parties that the Protected Material is “Confidential” or “Confidential -- Outside Counsel Only” and should be treated in accordance with the provisions of this Order. The receiving party or parties

1 must treat such Protected Material in accordance with this Order from the date
2 such notice is received. Disclosure of such Protected Material prior to receipt of
3 such notice to persons not authorized to receive it shall not be deemed a
4 violation of this Order; however, those persons to whom disclosure was made
5 shall be promptly advised by the receiving party that the material disclosed was
6 “Confidential” or “Confidential -- Outside Counsel Only” and must be treated in
7 accordance with this Order.

8 3. In the event the producing party elects to produce files and records
9 for inspection, and the inspecting party desires to inspect files, no marking need
10 be made by the producing party in advance of the initial inspection. For
11 purposes of the initial inspection, all documents and information within the
12 produced files shall be considered as designated “Confidential -- Outside
13 Counsel Only.” Thereafter, upon selection of specified documents for copying
14 by the inspecting party, the producing party shall mark the copies of such
15 documents as may contain Protected Material with the appropriate
16 confidentiality marking at the time the copies are produced to the inspecting
17 party.

18 4. Protected Material classified as “Confidential” may be disclosed
19 only to the following persons, except upon the prior written consent of the
20 designating party or further order of the Court:

- 21 a. Outside attorneys of record in this matter, and regular
22 employees of such attorneys assigned to and necessary to
23 assist in the conduct of this action;
- 24 b. Officers, employees, and in-house counsel for each party,
25 provided that they are materially involved in the prosecution,
26 defense, or settlement of this matter, and provided further
27 that such persons comply with Paragraph 7 of this Stipulated
28 Protective Order;

- c. Independent experts and consultants, including jury consultants, trial consultants, and graphics and animation specialists (collectively, “experts”) retained in this action by the outside attorneys of record, provided that the expert satisfies the conditions set forth in Paragraph 5 of this Protective Order;
- d. A witness during a deposition or at trial who, on the face of the document, is clearly an author or recipient of the document;
- e. Court reporters or videographers who are neither past nor present employees of any party and who are preparing transcripts of testimony of a witness in this case;
- f. Outside vendors who perform scanning, photocopying, computer classifications or similar clerical functions, but only for so long as necessary to perform those services and no documents or copies shall be retained; and
- g. This Court and any court to which a subpoena or an appeal related to this action might lie.

5. No expert shall receive Protected Material under Paragraph 4(c) or Paragraph 6 of this Stipulated Protective Order unless and until the conditions set forth in this Paragraph 5 are met. First, such expert must not be otherwise employed in any capacity by any of the Parties, their affiliates, their predecessors-in-interest, their successors-in-interest, or their counsel. Second, such expert must be provided with a copy of this Stipulated Protective Order. Third, such expert must comply with Paragraph 7 of this Stipulated Protective Order. Fourth, the signed acknowledgement form of Paragraph 7 must be sent to opposing counsel, together with the following information regarding the expert: name, present employer and title, and a resume or similar description of

1 prior work/employment, and all past or present affiliations with any party.
2 Fifth, opposing counsel shall have fourteen (14) calendar days after receipt of
3 the expert's identification and signed acknowledgment to object in good faith, in
4 writing, to disclosure of Protected Material on the basis that disclosure of
5 Protected Material to the proposed expert would result in material risk of
6 disclosure or misuse of the Protected Material. Opposing counsel then shall
7 have fourteen (14) additional calendar days to file a motion for a protective
8 order to exclude the proposed expert from receiving Protected Material. Failure
9 to object or file a motion within the time permitted by this Paragraph 5 shall be
10 deemed a waiver of any objection to the expert's access to the information. If a
11 timely objection is made, no disclosure of Protected Material shall be made to
12 the expert until the objection is resolved by the Court or the time for filing a
13 motion under this Paragraph has expired.

14 6. Certain financial, pricing, cost, licensing, supplier, vendor,
15 marketing, business strategy, sales, customer, engineering, development and
16 technical information that is particularly sensitive and/or of immediate
17 competitive significance may be designated "Confidential -- Outside Counsel
18 Only." Care shall be taken by the producing party to use the designation
19 "Confidential -- Outside Counsel Only" only where the producing party has a
20 good faith belief that such protection is needed. Access to all Protected Material
21 that is designated "Confidential -- Outside Counsel Only" shall be limited to
22 only those persons designated in paragraphs 4(a), (c), (d), (e), (f), and (g) above.

23 7. Prior to disclosure of Protected Material to any person enumerated
24 in Paragraph 4(b) or (c), the person receiving such Protected Material shall
25 execute the attached Agreement To Be Bound By Protective Order and a copy
26 of such executed Agreement shall be retained by counsel for the receiving party.
27 A copy of the executed Agreement shall be provided to counsel for the
28

1 producing party at least fourteen (14) calendar days prior to disclosure of
2 Protected Information.

3 8. Any Protected Material filed with the Court under seal shall be so
4 filed only as provided by Civil Local Rule 79-5. In the case of applications,
5 motions or other papers submitted to the Court in which a party submits
6 Protected Materials, all documents containing Protected Materials that are
7 submitted to the Court shall be lodged (not filed) with the Court in sealed
8 envelopes or other appropriate sealed containers on which shall be placed the
9 title of the litigation, an indication of the nature of the contents of the sealed
10 envelope or other container, and the words "Confidential" or "Confidential --
11 Outside Counsel Only" as appropriate. The party lodging the Protected
12 Materials shall simultaneously file a motion to seal such materials. Until the
13 Court rules on whether to seal, the lodged material shall remain under seal.

14 9. All notes, extracts, and summaries of Protected Material shall also
15 be considered Protected Material and shall be subject to the terms of this Order.
16 All copies of Protected Material shall be considered Protected Material.

17 10. A party shall not be obligated to challenge the propriety of a
18 "Confidential" or "Confidential -- Outside Counsel Only" classification at the
19 time made, and a failure to do so shall not preclude a subsequent challenge
20 thereto. Any party may request in writing to the party who produced Protected
21 Material that the classification be modified or withdrawn. If the designating
22 party does not agree to reclassification within fourteen (14) calendar days of
23 receipt of the written request, the requesting party may apply to the Court for
24 relief. Agreement of the parties to this Order shall not be construed as an
25 agreement or admission by one party that any information classified as
26 "Confidential" or "Confidential -- Outside Counsel Only" by the other party is
27 in fact confidential information. In determining whether any such designation is
28 proper, the Court shall be governed by the standards set forth in Fed. R. Civ. P.

1 26(c) and the case law thereunder. The burden of proof and persuasion shall be
2 on the party seeking to maintain confidentiality.

3 11. Protected Material disclosed through testimony or otherwise at any
4 deposition in this litigation may be designated as "Confidential" or
5 "Confidential -- Outside Counsel Only" by any party or the witness by
6 indicating on the record at the deposition or by written notice to the opposing
7 party within fourteen (14) calendar days of receipt of a transcript thereof. All
8 transcripts shall be treated as "Confidential -- Outside Counsel Only" until
9 expiration of the fourteen (14) calendar day period, unless otherwise agreed by
10 the parties and witness on the record at the deposition or in writing. The court
11 reporter shall designate those portions of the deposition transcripts which are
12 designated on the record as Protected Material with the appropriate
13 "Confidential" or "Confidential -- Outside Counsel Only" legend. If Protected
14 Material is to be disclosed during a deposition, any persons present who are not
15 authorized to receive such material shall be asked to leave the deposition until
16 such time as the testimony no longer involves disclosure of such material.

17 12. This Order shall not bar any attorney identified in paragraph 4(a)
18 above in the course of rendering advice to his or her client from referring to or
19 relying in a general way upon his or her examination of Protected Material
20 produced or exchanged herein, provided however, that in rendering such advice
21 and otherwise communicating with his or her client, the attorney shall not
22 disclose the specific contents or substance of any Protected Material produced
23 by another party herein if that disclosure would be contrary to the terms of this
24 Order.

25 ///

26 ///

27 ///

28 ///

1 13. Except as set forth in Paragraph 14 of this Stipulated Protective
2 Order, all Protected Material, including information contained in Protected
3 Material, may be used only for the purposes of the present litigation, including
4 all appeals, and in proceedings to enforce a subpoena in connection with this
5 litigation. In all appeals and proceedings to enforce a subpoena, the party
6 relying upon the Protected Material shall use appropriate procedures to ensure
7 that the Court treats the Protected Material as Confidential or Confidential –
8 Attorneys’ Eyes Only, in accordance with this Stipulated Protective Order. At
9 the conclusion of this litigation, by final judgment, settlement, or otherwise,
10 each party shall promptly return to the other party all Protected Material
11 produced, disclosed, or designated by such other party during this litigation.
12 Alternatively, a party may destroy these materials and certify in writing that it
13 has done so. Notwithstanding the foregoing, outside counsel may retain an
14 archival copy of documents filed with the Court or served as discovery
15 responses, as well as deposition transcripts whether filed with the court or not,
16 that contain Protected Material, provided such archival copies are maintained
17 subject to the terms of this Protective Order. Except as provided above, neither
18 party shall retain a copy in any form of Protected Material after the termination
19 of this litigation. The treatment accorded Protected Material under this Order
20 shall survive the termination of this action.

21 14. Any party receiving Protected Material who believes in good faith
22 that disclosure of such material to the United States Patent and Trademark
23 Office (PTO) is required by 37 C.F.R. § 1.56 may disclose such material to the
24 PTO using the confidential disclosure procedures set forth in Sections 724 -
25 724.06 of the Manual of Patent Examining Procedure. Any such disclosure
26 shall be accompanied by a Petition to Expunge such Protected Material from the
27 PTO’s file in accordance with 37 C.F.R. § 1.59(b) and Section 724.05 of the
28 Manual of Patent Examining Procedure. At least fourteen (14) calendar days

1 prior to submission of Protected Material to the PTO, the submitting party shall
2 provide written notice of the planned submission to the producing party. The
3 producing party may seek relief from this Court to prevent or otherwise restrict
4 disclosure of the Protected Material to the PTO.

5 15. In the event that a party seeks discovery from a non-party to this
6 action, either the non-party or the parties may invoke the terms of this Order
7 with respect to any Protected Material provided to the parties by the non-party
8 by so advising all parties in this suit in writing. Any non-party that discloses
9 Protected Material under this Order shall be entitled to the rights of a party
10 under this Protective Order with respect to those produced materials.

11 16. The parties shall, at the close of this litigation, promptly retrieve
12 from the Court all documents and things filed under seal during the course of
13 this litigation and shall return to the other party or parties, or destroy, all
14 Protected Material in accordance with Paragraph 13 of this Order.

15 17. Nothing in this Stipulated Protective Order shall restrict a party's
16 use of its own Protected Materials. Similarly, nothing in this Order shall be
17 deemed in any way to restrict the use of information that is lawfully obtained or
18 publicly available to a party independently of discovery in this action, whether
19 or not such information has also been obtained during the course of discovery in
20 the action.

21 18. Execution and entry of this Order shall not prevent a party to the
22 litigation or a non-party under Paragraph 15 from seeking modification of or
23 relief from this Order or from seeking other relief or protective orders as may
24 become appropriate or necessary to efficiently prepare this matter for trial.

25 19. The parties shall cooperate with one another to minimize the need
26 for filing documents under seal. For example, where the information that
27 renders a document confidential is not germane to the issue to which the filing
28 relates, the parties should agree to redaction of such information from the filed

document, (e.g., the substitution of “John Doe” names in place of real identities).

Dated: April 26, 2012

/s/

The Honorable Victor B. Kenton
United States Magistrate Judge

APPROVED AS TO FORM AND CONTENT:

Date: April 20, 2012

Date: April 20, 2012

/s/ Paul A. Stewart

Craig S. Summers
Paul A. Stewart
Bridget O’L. Smith
**KNOBBE, MARTENS, OLSON
& BEAR, LLP**
2040 Main Street, 14th Floor
Irvine, CA 92614

Attorneys for Plaintiff/
Counterdefendant,
DATCARD SYSTEMS, INC.

/Marc E. Hankin/

Marc E. Hankin
Kevin Schraven
HANKIN PATENT LAW APC
12400 Wilshire Boulevard
Suite 1265
Los Angeles, CA 90025

Attorneys for Defendant/
Counterclaimant,
DATA DISTRIBUTING, LLC

13151026

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DATCARD SYSTEMS, INC., a California corporation,	}	Case No. SACV 11-1434-DOC (VBKx)
Plaintiff,		AGREEMENT TO BE BOUND BY PROTECTIVE ORDER
v.		
DATA DISTRIBUTING, LLC, a California Limited Liability Corporation,	}	
Defendant.		}
<hr/> AND RELATED COUNTERCLAIMS <hr/>		

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

In consideration of the disclosure to me or production by me of certain information which is or, upon production, may be designated as subject to a Protective Order of the Court, I agree as follows:

1. I have read the Protective Order in this case and I agree to be bound by its terms.
2. I understand that if I violate the terms of the Protective Order, I may be subject to a contempt of court proceeding.
3. I agree to submit to the jurisdiction of the Court for the purpose of enforcement of this Protective Order.

Dated: _____

(Signature)

(Print Name)

(Address)

(Address)